

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 70

Introduced by Chambers, 11

Read first time January 7, 1999

Committee: Judiciary

A BILL

1 FOR AN ACT relating to civil rights; to amend section 28-307,
2 Reissue Revised Statutes of Nebraska; to adopt the
3 Voluntary Physician Aid-In-Dying Act; to provide a
4 penalty; to change provisions relating to murder,
5 homicide, assault, and assisting suicide; and to repeal
6 the original section.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 15 of this act shall be known
2 and may be cited as the Voluntary Physician Aid-In-Dying Act.

3 Sec. 2. The Legislature finds and declares that autonomy
4 of mind and body is the epitome of freedom and is one of the most
5 cherished values of our society. The right of self-determination
6 lies at the core of our beliefs and is the common interest which
7 binds our diverse elements together. Equally vital is our
8 compassion for our fellow human beings. Jew, Christian, Muslim,
9 Baha'i, Hindu, and Buddhist all abhor unnecessary human pain and
10 suffering. Whether or not individuals believe that there is
11 another life after this one, there is the desire to avoid a
12 prolonged or painful death before leaving this planet. The
13 Voluntary Physician Aid-In-Dying Act springs from these universal
14 foundations of value: The relief of unnecessary human suffering
15 and the preservation of self-determination through choice-in-dying.
16 When quality of life has fled and terminal illness has the person
17 in its grip, the act offers choice. Passage of this act will
18 preserve the autonomy of the person while at the same time
19 providing superior safeguards to prevent abuse. Ultimately, the
20 act permits the terminally ill person relief from his or her
21 personal suffering in a way that is compassionate, humane, and
22 dignified.

23 Sec. 3. For purposes of the Voluntary Physician
24 Aid-In-Dying Act:

25 (1) Aid-in-dying means the administration, by a physician
26 or a declarant under a physician's direction, of one or more
27 potentially lethal dosages of medication that, in the opinion of
28 the attending physician, will end the life of a declarant in a

1 compassionate, humane, and dignified manner. The administration of
2 the medication may be by any medical means;

3 (2) Adult means any person who is nineteen years of age
4 or older or who is or has been emancipated;

5 (3) Advance directive means a revocable request, in
6 writing, executed by a mentally competent qualified patient,
7 governing the administration of aid-in-dying by an attending
8 physician;

9 (4) Attending physician means the physician who is
10 primarily responsible for the treatment and care of the qualified
11 patient;

12 (5) Declarant means a person who executes an advance
13 directive under the terms of the act;

14 (6) Health care provider means a person or a facility
15 licensed, certified, or otherwise officially authorized or
16 permitted by the laws of this state to administer health care in
17 the ordinary course of business or professional practice;

18 (7) Incapable means unable to understand and appreciate
19 the nature and consequences of health care decisions, including the
20 administration of aid-in-dying, or unable to communicate in any
21 manner whatsoever an informed health care decision;

22 (8) Patient advocate means a person appointed by the
23 declarant pursuant to section 5 of this act to make decisions
24 regarding the administration of aid-in-dying in the event the
25 declarant becomes incapable of making such decisions;

26 (9) Physician means a person licensed to practice
27 medicine and surgery in this state pursuant to section 71-1,104;

28 (10) Qualified patient means an adult diagnosed as having

1 a terminal condition by the attending physician and one other
2 physician. Each physician's diagnosis shall be in writing; and

3 (11) Terminal condition means an incurable or
4 irreversible condition which will result, in the opinion of the
5 attending physician and one other physician both of whom have
6 personally examined the qualified patient, in a qualified patient's
7 death within six months. The attending physician and the other
8 physician shall not be partners or shareholders in the same medical
9 practice.

10 Sec. 4. (1) A mentally competent qualified patient may
11 execute, at any time, an advance directive governing the
12 administration of aid-in-dying procedures. An advance directive
13 shall be in writing, dated, and signed by the declarant before two
14 witnesses in order to be valid. The witnesses may not:

15 (a) Be related to the declarant by blood, marriage, or
16 adoption;

17 (b) Be entitled to any portion of the declarant's estate
18 upon his or her death;

19 (c) Have a creditor's claim against the declarant or
20 anticipate making such a claim; or

21 (d) Be the attending physician of the declarant, an
22 employee of the attending physician, a health care provider, or an
23 employee of a health care provider.

24 (2) Aid-in-dying may be administered to a declarant only
25 in strict accordance with the terms of his or her validly executed
26 advance directive. A validly executed advance directive shall be
27 made a part of the declarant's medical record by the attending
28 physician and by any health care provider or institution where the

1 declarant may be located.

2 Sec. 5. (1) A patient advocate shall be appointed in
3 conjunction with the execution of a valid advance directive. The
4 appointment of a patient advocate may be included in the advance
5 directive or may be a separate document. The appointment shall be
6 in writing, dated, and, if in a separate document, signed by the
7 declarant before two witnesses in order to be valid. The witnesses
8 shall meet the conditions of subdivisions (1)(a) through (d) of
9 section 4 of this act. A statement of acceptance of the
10 appointment shall be included in the appointment of the patient
11 advocate. In addition, a patient advocate shall be a mentally
12 competent adult and shall not be the attending physician. The
13 appointment, whether included in the declarant's advance directive
14 or executed separately, shall be made a part of the declarant's
15 medical record. A declarant may also appoint an alternative
16 patient advocate in the same manner as the appointment of the
17 original patient advocate to serve if the original patient advocate
18 appointed is unwilling or unable to serve. A patient advocate is
19 not an attorney in fact as defined in section 30-3402 nor is he or
20 she governed by sections 30-3401 to 30-3432.

21 (2) The patient advocate appointed in writing by the
22 declarant pursuant to subsection (1) of this section is responsible
23 for ensuring that the advance directive of the declarant is honored
24 in the event the declarant becomes unable to communicate.

25 Sec. 6. An advance directive or an appointment of a
26 patient advocate may be revoked by the declarant at any time,
27 either orally or in writing, without regard to the declarant's
28 mental or physical state. No physician, health care provider, or

1 employee of either shall be held civilly, criminally, or
2 administratively liable for following an advance directive which
3 has been revoked if such physician, health care provider, or
4 employee of either had no actual or constructive notice of the
5 revocation. A person who witnesses a declarant's revocation of an
6 advance directive or a declarant's revocation of an appointment of
7 a patient advocate has a duty under the Voluntary Physician
8 Aid-In-Dying Act to make a deliberate effort to give notice of such
9 revocation to the declarant's attending physician. A written
10 record of the revocation shall be added to the declarant's medical
11 record.

12 Sec. 7. No physician, health care provider, or employee
13 of either shall be required to administer or participate in
14 aid-in-dying against his or her will.

15 Sec. 8. No attending physician, health care provider, or
16 employee of either or the appointed patient advocate who acts in
17 accordance with the Voluntary Physician Aid-In-Dying Act shall be
18 subject to civil, criminal, or administrative liability or any
19 penalty therefor.

20 Sec. 9. A person who willfully conceals, cancels,
21 defaces, falsifies, forges, or otherwise obliterates the advance
22 directive of a declarant or a written appointment of a patient
23 advocate by a declarant is guilty of a Class I misdemeanor. Any
24 person who falsifies or forges the advance directive of another
25 person, or who willfully conceals or withholds personal knowledge
26 of a revocation of an advance directive with the intent to induce
27 aid-in-dying procedures contrary to the wishes of the declarant
28 and, because of such concealment or withholding, causes

1 aid-in-dying to be administered, is subject to the appropriate
2 criminal prosecution, including prosecution for homicide.

3 Sec. 10. The administration of aid-in-dying in
4 accordance with the Voluntary Physician Aid-In-Dying Act shall not,
5 for any purpose, civil, criminal, or administrative, constitute
6 suicide.

7 Sec. 11. The sale, procurement, or issuance of any life,
8 health, accident, or annuity insurance policy or the rate charged
9 for any such policy shall not be conditioned upon or affected by
10 the execution or revocation of an advance directive by a declarant
11 or any provision of an advance directive.

12 Sec. 12. An advance directive is not valid if it is
13 executed as a result of coercion, fraudulent inducement, or duress.

14 Sec. 13. An attending physician who is requested to
15 administer aid-in-dying may request, but is not required to
16 request, an evaluation of the declarant by a licensed mental health
17 professional qualified to make such evaluation to determine his or
18 her mental competence.

19 Sec. 14. The Voluntary Physician Aid-In-Dying Act is a
20 separate act and is not related in any way to the Rights of the
21 Terminally Ill Act or the power of attorney for health care
22 pursuant to sections 30-3401 to 30-3432.

23 Sec. 15. Any person whose conduct is in compliance with
24 the Voluntary Physician Aid-In-Dying Act does not commit murder,
25 homicide, or assault or any attempt thereof.

26 Sec. 16. Section 28-307, Reissue Revised Statutes of
27 Nebraska, is amended to read:

28 28-307. (1) A person commits the offense of assisting

1 suicide when, with the intent to assist another person in
2 committing suicide, he or she aids and abets ~~him~~ such person in
3 committing or attempting to commit suicide.

4 (2) Any person whose conduct is in compliance with the
5 Voluntary Physician Aid-In-Dying Act does not commit the offense of
6 assisting suicide.

7 (3) ~~(2)~~ Assisting suicide is a Class IV felony.

8 Sec. 17. Original section 28-307, Reissue Revised
9 Statutes of Nebraska, is repealed.